

STATE OF MICHIGAN
COURT OF APPEALS

NANCY SHARPE,

Plaintiff-Appellant,

v

LAXMI-G PORT HURON, INC., d/b/a
COMFORT INN PORT HURON,

Defendant-Appellant.

UNPUBLISHED

January 25, 2000

No. 213390

St. Clair Circuit Court

LC No. 96 001175

Before: Zahra, P.J., and Saad and Gage, JJ.

PER CURIAM.

In this personal injury action, the jury found that defendant was not liable for injuries plaintiff Nancy Sharpe sustained from falling in a hotel bathroom after she discovered that she was sleeping in a hotel bed with a wet spot. Plaintiffs appeal as of right from the judgment of no cause of action entered by the trial court following the jury's verdict.

I

Plaintiffs argue that the trial court's instructions to the jury were erroneous and confusing and therefore denied plaintiffs their right to a fair trial, and caused a miscarriage of justice. Specifically, plaintiffs assert the jury was confused by the judge giving the standard jury instructions regarding premises liability rather than negligence. Plaintiffs also contend that the judge should have included plaintiff's supplemental instructions that explained proximate cause. Plaintiffs did not object to the jury instructions at trial and this Court will review an unpreserved issue concerning an error in jury instructions only when necessary to prevent manifest injustice. *Phillips v Deihm*, 213 Mich App 389, 403; 541 NW2d 566 (1995). Manifest injustice results if the defect is of such magnitude as to constitute plain error requiring a new trial or if it pertains to a basic and controlling issue in the case. *Mina v General Sar Indemnity Co*, 218 Mich App 678, 681; 555 NW2d 1 (1996).

There is no error requiring reversal "if, on balance, the theories of the parties and the applicable law were adequately and fairly presented to the jury." *Murdock v Higgins*, 454 Mich 46, 60; 559 NW2d 639 (1997). Here, the jury instructions did not constitute plain error and no manifest injustice

would result by our not disturbing the jury's decision. The jury was charged with deciding negligence, causation, and damages. The judge defined negligence for the jury and explained defendant's duty to exercise ordinary care and the statutory duties of a hotel under MCL 427.6; MSA 18.326. The trial court presented the applicable law to the jury by reading the standard instructions and covered what the jury needed to know to decide this case.

Plaintiffs argue that without supplemental instructions explaining proximate cause, the standard instructions were insufficient for the jury to adequately decide proximate cause. However, the explanation of proximate cause in the judge's standard jury instructions was complete and supplemental instructions were not necessary. As given, the instructions effectively allowed the jury to consider whether the wet spot on the mattress could have been a proximate cause, in combination with plaintiff panicking and running into the bathroom door, for her injuries. The judge's instruction "the plaintiff's injury must have been a natural and probable result of the negligent conduct" and "a cause may be proximate although it and another cause acted at the same time or in combination to produce the occurrence," gave the jury an adequate explanation of proximate cause and plaintiffs did not prove any further instructions were needed.

II

Plaintiffs also contend that the jury's finding that defendant was not negligent was not supported by the evidence presented at trial. Plaintiffs did not file a motion for new trial or a motion for judgment notwithstanding the verdict. If a party does not move for JNOV at trial or by a post-verdict motion, the issue cannot be reviewed on appeal, absent a showing of compelling or extraordinary circumstances amounting to a fundamental miscarriage of justice. *Napier v Jacobs*, 429 Mich 222 233; 414 NW2d 862 (1987). No such circumstances exist in this case.

There was no fundamental miscarriage of justice in this case. Viewing the evidence in the light most favorable to defendant, a reasonable jury could conclude that defendant was not negligent. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998), quoting *Orzel v Scott Drug Co*, 449 Mich 550, 557-558; 537 NW2d 208 (1995). Furthermore, the verdict was not against the overwhelming weight of the evidence. *Severn v Sperry Corp*, 212 Mich App 406, 412; 538 NW2d 50 (1995).

Plaintiffs say that the evidence established that defendant was negligent under common law and MCL 427.6; MSA 18.326, mandating that beds shall be kept in a sanitary condition. However, given the evidence before it, the jury could have reasonably found that simply because the bed had a wet spot does not mean that the statutory mandate for sanitary conditions was violated. It was never established that the liquid was urine, or if urine, that it was not plaintiff Nancy Sharpe's. Geraldine Rekkar saw the spot on the bed and said it did not look old, had no odor and was clear. Moreover, the jury heard evidence that the health department did not issue a citation after investigating the incident.

Furthermore, defendant introduced evidence that the hotel used "ordinary care" in checking the condition of the hotel rooms. Defendant implemented a specific procedure to clean soiled beds and the room was checked by the head of housekeeping after being cleaned before plaintiffs arrived. When the beds were checked, reports were routinely kept of the condition of the room. Rekkar testified that the

room had been cleaned and inspected on September 16, 1994. The report for room in which plaintiffs stayed stated that a clean blanket and mattress pad were put on the bed. Indeed, plaintiff said the bed appeared clean before the incident. Plaintiff also testified that nothing was wrong with the bathroom or the hotel room other than the wet spot; therefore, the jury could have found that the hotel did not breach its duty to keep the room in a safe condition as instructed by the trial judge. The jury heard sufficient evidence to conclude as it did that defendant was not negligent because it fulfilled its duty of "ordinary care."

On this record, the jury could reasonably have found that defendant was not negligent by violating the statute or breaching a duty of ordinary care. For the same reason, we conclude that the jury's verdict was not against the great weight of the evidence. Accordingly, no fundamental miscarriage of justice would result from allowing the jury's verdict to stand.

Affirmed.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Hilda R. Gage